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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,235	12/05/2003	Roger Thomas	P-US-PR 1112	9207

28268 7590 04/11/2007  
 THE BLACK & DECKER CORPORATION  
 701 EAST JOPPA ROAD, TW199  
 TOWSON, MD 21286

EXAMINER
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SELF, SHELLEY M

ART UNIT	PAPER NUMBER
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3725

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/729,235	THOMAS, ROGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) 4 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/6/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on February 2, 2007 has been considered but is ineffective to overcome the prior art reference.

### ***Terminal Disclaimer***

The terminal disclaimer filed on February 20, 2007 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of co-pending Application 10/729232 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Eichberger et al. (5,815,934). Eichberger disclose a planer comprising: a shoe, the shoe defining an aperture (fig. 1); a body (fig. 1) mounted on the shoe, the body defining an exhaust aperture (fig. 1), the exhaust aperture defines a first exhaust aperture and a second exhaust aperture (fig. 5), and including a wall (31, 32, 48), the wall defining a recess; a cutting drum (15) rotatably mounted

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within the recess (fig. 1), the drum (15) having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor (18) mounted within the body to drive the cutting drum (15); a cutting blade (col. 3, lines 18-24) mounted on the periphery of the drum and adapted for cutting a work piece, the cutting action of the blade causing debris created by the cutting to be ejected from the recess (col. 4, lines 46-51); an airflow generator (11) for producing an airflow within the body (col. 4, lines 31-35); a conduit (28, 29, 30) defined within the body and directly connected to the recess (18) for directing the airflow; the conduit in communication with first and second exhaust apertures (fig. 1, 5) and connected to the recess for entraining and removing debris ejected from the recess (25); and a removable deflector (50; figs. 7-11) having an inner end and an outer end, the deflector (50) insertable through one of the first exhaust aperture and the second exhaust aperture and connectable to the conduit (28, 29, 30) for guiding the airflow and entrained debris from within the body to the outside of the body (col. 4, lines 36-45).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al (DE3542263). Maier discloses a planer comprising; a shoe (12) the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1) the body defining an exhaust

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aperture (17) and including a wall, the wall defining a recess (fig. 1), a cutting drum (11) within the recess, the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor, a cutting blade, an airflow generator, a conduit (23) defined within the body for directing airflow, the conduit in communication with the exhaust aperture and directly connected to the recess for entraining and removing debris; a deflector (22), a flap (21) movable where the flap closes the exhaust aperture and to a second position where the flap does not close the exhaust aperture. Maier does not disclose the deflector to be removable. It would have been obvious at the time of the invention to one having ordinary skill in the art to construct Maier such that the deflector (22) is removable because forming in separable, i.e., removable parts what was formerly constructed as an integral structure requires only routine skill in the art. *Nerwin v. Erlicnman*, 168 USPQ 177, 179.

As to the airflow generator, it is inherent that Maier disclose an airflow generator so as to generate air to facilitate blowing of debris/chips through the chip discharge/exhaust openings (17).

With regard to claim 3, Maier discloses wherein a wall in the body also defines an expulsion aperture and the conduit (23) is connected to the recess (fig. 1) by the expulsion aperture (16) and the cutting action of the blade causes debris created by the cutting to be ejected from the recess through the expulsion aperture (16) and into the conduit substantially along a first direction and the airflow in the conduit is directed within the body to a point below the expulsion aperture and then is directed by the conduit to be blown across the expulsion aperture along a second direction the first direction of the debris and the second direction of the airflow intersect at an acute angle. Examiner notes the airflow traveling along a line, the debris/chips

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traveling along a second different line the two lines to intersect so as to allow the airflow to blow/direct the debris out of the exhaust aperture. Because the two lines of direction intersect and supplemental angles are formed, one angle being acute and one being obtuse, thus Maier obviously discloses intersecting of the travel directions at an acute angle.

With regard to claims 5 and 6, Maier discloses wherein the conduit (23) directs the airflow over the deflector (22) prior to directing the airflow to the point below the expulsion aperture. Examiner notes the ability of the deflector to rotate facilitates direction airflow over the deflector prior to directing the airflow below the expulsion aperture.

As to a first and second position (clms. 7, 8), Examiner notes the flap (21) to be rotatable, thus positions are determined by the operator, i.e. the operator may stop rotation of the flap at any position within the range of rotation. Therefore having at least a first and second position.

With regard to claims 9 and 12, Maier discloses wherein the flap (21) extends from a pivot axis to side of the body (10).

With regard to claim 10, Maier discloses the flap pivotally mounted within the body and pivotably between the first and second positions.

With regard to claim 13, it is obvious in Maier that the flap be biased to a first or second position so as to adequately close either a first opening of the exhaust aperture (17) or a second opening so as to allow the debris/chips to be ejected from either side of the body via the exhaust openings (17).

***Allowable Subject Matter***

Claims 4 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:  
For the reasons noted in the previous Office Action (8/2/06).

***Response to Arguments***

Applicant's arguments filed February 2, 2007 have been fully considered but they are not persuasive. Applicant's remarks are drawn to the failure of prior art, Eichberger to disclose a "*conduit directly connected to the recess for entraining and removing debris...*" Applicant further argues that Eichberger's channel (30) is separated from the recess/drum compartment (18) via wall (32) and therefore not in direct contact with the recess (18). This argument is not found persuasive, because Eichberger teaches a conduit (28) in communication with an air channel (30) so as to entrain and remove debris generated by the cutting drum (15) in the recess (18). The conduit (28) is directly connected to the recess (18). Therefore, Eichberger discloses the invention as claimed. Accordingly the rejection(s) in view of Eichberger stand.

In response to Applicant's remarks that Maier fails to disclose or fairly suggest a *conduit directly connected to the recess for entraining and removing debris*, this too is not deemed persuasive. Applicant notes a full translation of the Maier references is included in a separate Information Disclosure Statement (Remarks 2/2/07; pg. 6), however no such translation or IDS has been received by the Office. Examiner notes the IDS filed February 6, 2007 does not include

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any translation of the Maier reference. Further, Examiner notes Maier inherently discloses a conduit in direct contact/directly connected to the recess so as to efficiently remove debris. If in fact there was no conduit connected to the recess and that such was separated by a wall, Maier would not function as claimed, thus destroying Maier. Maier explicitly teaches discharge/exhaust openings (17) on both sides of the planer body. In operation, Maier's cutting drum (11) within a recess (fig. 1) rotates to remove material from a workpiece, upon material removal, debris is generated, the generated debris is discharged through the planer body, i.e. conduit from the recess to the discharge openings (17). Examiner notes any blockage, wall or lack thereof a conduit from the drum recess (fig. 1) would prohibit the debris/chips from being discharged through the side discharge openings (17) of the planer body. Accordingly a rejection in view of Maier stands.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**SHELLEY M. SELF**  
PRIMARY EXAMINER

April 5, 2007

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